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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

OLGA TELLIS & ORS VS BOMBAY MUNICIPAL CORPORATION & ORS: A LANDMARK RULING ON THE RIGHT TO LIVELIHOOD AND JUDICIAL ACTIVISM*

AUTHORED BY - PRANJAL SRIVASTAV

Introduction

The case of “Olga Tellis & Ors v BMC & Ors” is a significant cornerstone in Indian Constitutional jurisprudence. The case in particular turned out to be important regarding the broader interpretation of “Right to life” under Article 21 of the Indian Constitution. The case was presided over by the Constitution bench of five judges -

1. Chief Justice Y.V. Chandrachud
2. Justice A.V. Varadarajan
3. Justice O. Chinnappa Reddy
4. Justice S. Murtaza Fazal Ali
5. Justice V.D. Tulzapurkar

The case showcased the tension between individual rights and public interest, reinforcing the role of the judiciary in protecting marginalized sections of the society. It involved the eviction of pavement dwellers in Mumbai, who challenged the actions undertaken by Bombay Municipal Corporation. The challenge was on the grounds that the actions were violative of their fundamental rights granted to them by the Constitution of India.

Case Facts¹

- In the early 1980s the BMC commenced a campaign for the removal of pavement dwellers from public spaces in the city. The motive was to do away with any health hazards, ensure public safety and additionally to keep public areas clear.

¹ <https://www.lawyersclubindia.com/judiciary/olga-tellis-v-bmc-watershed-on-right-to-livelihood-and-procedural-fairness-7350.asp>

- The legal basis for this action of BMC was the Bombay Municipal Corporation Act of 1988 which empowered the corporation to remove impediments from public spaces without any prior notice.
- However many pavements accompanied by journalist and social activist Olga Tellis filed a petition in the Bombay High Court challenging the eviction. The challenge was based on the fact that if they were to be evicted, it would deprive them of their livelihood considering that they had no alternative place to live and therefore violated their fundamental rights under Article 21 of the Indian Constitution.

Issues Before the Court

The apex court had to address several critical issues

1. Whether the "Right to life" under Article 21 also includes the right to livelihood and if yes, then whether the actions by the state violates this right.
2. The court had to consider the importance of work and dignity in the context of right to life under Article 21 of the Indian Constitution.
3. The court had to examine the state's obligation to protect the livelihoods of marginalized labor categories and the extent of this responsibility.
4. The requirement of furnishing rehabilitation to the people evicted from public spaces.

Petitioners' Arguments

Representing payment dwellers and slum residents, the petitioners presented a case rooted in safeguarding fundamental rights.

1. The petitioners argued that Article 21 incorporates the right to livelihood as recognised by the Supreme Court itself in earlier judgements. They asserted that the action of eviction would lead to loss of livelihood resulting in starvation and deprivation due to the fact that the income of affected people primarily relied on proximity to employment opportunities in the city.
2. They emphasized that the eviction was arbitrary because they had no other place to live and the state had also not offered any kind of alternate rehabilitation.
3. The petitioners contended that it is the duty of the state to safeguard marginalized groups and not to deprive them from any means of subsistence.

4. They contended that in order to remain in their daily wage jobs, it was important that they remain close to their places of employment therefore the state's action to evict them would not only deprive them of their place of living but also result in loss of their source of income.
5. The petitioners also argued that the notices were served without providing an opportunity to be heard thereby violating the principles of natural justice.

Respondents' Arguments

The BMC and the state of Maharashtra defended the eviction on various grounds

1. The respondents argued that the actions taken by BMC were legally sanctioned by the Bombay Municipal Corporation Act 1888. The act empowers the corporation to remove obstructions from public spaces without giving any prior notice.
2. The respondents contended that the action of removal of pavement dwellers was in the public interest, emphasizing the concerns of public health safety in general and the need to maintain public order efficiently.
3. The respondents emphasized that Right to livelihood is not absolute and cannot override public interest. It does not incorporate the right to occupy public spaces illegally.
4. The provision of rehabilitation or resettlement was a matter of policy and not merely legal right. They cannot be enforced through judicial intervention.
5. The respondents also labeled the petitioners as trespassers and contended that they had no legal right to occupy public spaces and their removal was within the legal powers of the corporation.

Legal Framework and Statutes Involved

- Article 19(1)(e) and 19(1)(g); Protects the freedom to reside and to practice any profession respectively.
- Article 21 of the Constitution; Protects the right to live which was argued to include the right to livelihood.
- Bombay Municipal Corporation Act 1888; Section 312 and 314 empower the corporation to remove obstructions from streets and public spaces without any prior notice.

- Maharashtra Slum Areas Act 197; Involved in discussions on slum improvement clearance and road development.

Judgment and Reasoning

The supreme court delivered a judgment that expanded the interpretation of article 21, the apex court held that the right to life does include the right to livelihood and any action that deprives any person of the livelihood must meet the standards of due process.

1. The court highlighted the right to life encompasses more than mere survival. It includes the right to live with dignity which cannot be ensured if the means of livelihood are taken away.
2. The court ruled that eviction without due process, without providing any opportunity to be heard and without offering any form of rehabilitation is unconstitutional.
3. The judgment recognised the duty of the state to make sure that any marginalized section of the society is not deprived of their basic means of livelihood. Directions were also issued to the BMC to formulate a scheme providing alternate rehabilitation to those who are evicted.
4. The court also acknowledged that the right to life does not mean the right to encroach upon public spaces or public property. The ruling balanced individual rights with public interest, holding that while the right to livelihood is fundamental, it must be exercised within the confines of the law.

Significance of the Judgment

The case is indeed a cornerstone in the evolution of the right to life under Article 21. The case led to a wide understanding of the article including social-economic rights such as right to livelihood. The judgment highlighted the role of judiciary as the custodian of rights of vulnerable populations especially those marginalized by State actions. The case also reinforced the principle-that the state must follow due process of law before taking any action affecting an individual's fundamental rights. The case has become a notable example of judicial activism where the court has expanded the scope of constitutional rights to address the needs of marginalized sections of the society. Some may have the opinion that even though the judgment provided immediate relief to pavement dwellers, it did not however establish a permanent solution to the broader issues of housing and

livelihood. It also left an open question on the extent to which the state is obliged to provide rehabilitation as a legal right. The case had a lasting impact on slum rehabilitation policies influencing future judgements related to the rights of urban poor.

Jurisprudence and Rationale²

The decision in the judgment seemed rooted in legal positivism. The Chief Justice referred to *Kelson's theory of constitution* as the basic norm asserting that all laws derive their legitimacy from the constitution. The decision also reflected Bentham's principles of law reform and utilitarianism. Welfare of pavement dwellers under the principle of “greatest happiness for the greatest number” is prioritized.

The case also marked a significant shift from censorial to expository jurisprudence. By expanding Article 21 of the constitution to also include the “right to livelihood”. The Court upheld the petitioners' rights under hedonist utilitarianism by weighing the value of slum inhabitants against the law.

The ruling in *Olga Tellis* is a pivotal moment in the evolution of Indian constitutional jurisprudence. It casted a profound light on the intersection of state authority and individual rights. Implementing judicial activism is a testament to the judiciary's significant role in safeguarding marginalized communities. At the same time it also underscores the challenges and inherent complexities of such judicial interventions. The landmark judgment extended the realm of Article 21 of the Indian Constitution by incorporating the right to livelihood under the right to life. This marked a significant shift from a mere survival oriented view to recognise and acknowledge the importance of dignity and meaningful existence.

Conclusion

The *Olga Tellis* case set the stage for the defense of socio-economic rights within the larger framework of *right to life*. Serving as a prime example of how the judiciary plays an important role in defending the rights of the downtrodden. It also serves as a reminder of the complexities

² https://www.legalserviceindia.com/articles/case.htm#google_vignette

and challenges that come with judicial activism. The role of judiciary is of utmost importance and so is the balance of powers to keep in check any judicial overreach. As India continues to grapple with the impacts of urbanization and social-economic changes, the principle established in the case will without any doubt influence future policy decisions and judgements. It remains a testament to the significance of judicial vigilance in defending fundamental rights even as it invites reflection on the balance between judicial activism and practical realities of governance.

Other Reference-

1. <https://indiankanoon.org/doc/709776/>

